

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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KEVIN ALMY,

Plaintiff,

Case No. 3:13-cv-00645-MMD-VPC

v.

ORDER

R. BANNISTER, *et al.*,

Defendants.

I. SUMMARY

Before the Court is Plaintiff's objection to the United States Magistrate Judge Valerie P. Cooke's rulings at an October 23, 2014, hearing. (Dkt. no. 63). Plaintiff has also filed a request for expedited ruling on his objection with respect to the Magistrate Judge's decision to deny his request to amend his complaint. (Dkt. no. 125.)

II. STANDARD OF REVIEW

Magistrate judges are authorized to resolve pretrial matters subject to district court review under a "clearly erroneous or contrary to law" standard. 28 U.S.C. § 636(b)(1)(A); *see also* Fed. R. Civ. P. 72(a); L.R. IB 3-1(a) ("A district judge may reconsider any pretrial matter referred to a magistrate judge in a civil or criminal case pursuant to LR IB 1-3, where it has been shown that the magistrate judge's ruling is clearly erroneous or contrary to law."). "This subsection would also enable the court to delegate some of the more administrative functions to a magistrate judge, such as . . . assistance in the preparation of plans to achieve prompt disposition of cases in the court." *Gomez v. United States*, 490 U.S. 858, 869 (1989). "A finding is clearly

erroneous when, although there is evidence to support it, the reviewing body on the entire evidence is left with the definite and firm conviction that a mistake has been committed.” *United States v. Ressam*, 593 F.3d 1095, 1118 (9th Cir. 2010) (quotation omitted). A magistrate judge’s pretrial order issued under 28 U.S.C. § 636(b)(1)(A) is not subject to *de novo* review, and the reviewing court “may not simply substitute its judgment for that of the deciding court.” *Grimes v. City & County of San Francisco*, 951 F.2d 236, 241 (9th Cir. 1991).

III. DISCUSSION

Plaintiff objects to the Magistrate Judge’s decision to deny Plaintiff’s request (1) for extension of time to conduct discovery; (2) for order to identify and produce contact information for two individual defendants; (3) to extend his copy work limit; and (4) for leave to amend. (Dkt. no. 63.) The Magistrate Judge presented these rulings orally after hearing from the parties on October 23, 2014. (Dkt. no. 60.) The Court will address each objection in turn below.

A. Extension of Time

Plaintiff moved to extend the discovery deadline by sixty (60) days, citing “extreme pain” from injuries caused by excessive use of force that is alleged in another case and the pressure of the work required in this case and his other pending cases, including a trial set for the December 3, 2014, stack. (Dkt. no. 38.) The Magistrate Judge explained her ruling as follows:

The parties are engaging in and completing discovery. If plaintiff is dissatisfied with the discovery responses, he shall comply with the Local Rules regarding meet and confer requirements, and file a motion to compel, if necessary.

(Dkt. no. 60.) Plaintiff admits that he did not comply with the requirements for seeking an extension, including identifying the discovery completed, discovery that remains and the reason the remaining discovery was not completed. (Dkt. no. 63 at 1.) The Court finds that Plaintiff has failed to show that the Magistrate Judge’s decision to deny his request to extend the discovery deadline is clearly erroneous. Moreover, the Magistrate

1 Judge subsequently granted Plaintiff's unopposed motion to extend the scheduling
2 order by sixty (60) days. (Dkt. no. 89.)

3 **B. Request for Order to Identify Defendants**

4 Plaintiff objects to the Magistrate Judge's decision to deny his request to identify
5 two defendants, Gibson and Jane Doe, and produce their contact information. (Dkt. no.
6 63 at 2-3.) Plaintiff's objection is rendered moot since both defendants have made an
7 appearance. (Dkt. nos. 101, 116.)

8 **C. Request to Increase Prison Copy Work Limit**

9 Plaintiff objects to the Magistrate Judge's decision to deny his request to
10 increase his prison copy work limit by an additional \$30, citing the need to file a motion
11 to amend his complaint and compliance with the Court's filing requirements. (Dkt. no. 63
12 at 4; dkt. no. 40.) In doing so, the Magistrate Judge directed defendants to provide
13 copies of discovery responses to their opposition should plaintiff file a motion to compel
14 and granted plaintiff leave to renew his motion, if necessary. (Dkt. no. 60 at 2.) Plaintiff
15 subsequently filed another motion for enlargement of prison copy work limit (dkt. no.
16 103), which the Magistrate Judge granted in part (dkt. no. 129). Plaintiff has failed to
17 demonstrate that the Magistrate Judge's decision was clearly erroneous.

18 **D. Motion to Amend**

19 Plaintiff filed his motion to amend on September 11, 2014, after the expiration of
20 the deadline for filing motions to amend.¹ (Dkt. no. 45.) Plaintiff's proposed amended
21 complaint, 138 pages in length, seeks to add 40 defendants and "new causes which
22 include seven instances of retaliation, and numerous other causes which were not in
23 existence or grievance exhaustion was incomplete at time the original complaint was
24 filed." (*Id.* at 2-5; dkt. nos. 45-1, 45-2.) The Magistrate Judge denied Plaintiff's request,
25 finding that granting leave to amend would unduly prejudice Defendants and result in
26 unreasonable delay. (Dkt. no. 60.)

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28 ¹The Scheduling Order established the deadline for amendments of pleading as
sixty (60) days from the date of that order or September 6, 2014. (Dkt. no. 36, ¶ 2.)


1 Plaintiff asks the Court to review the Magistrate Judge's decision to deny his
2 motion to amend *de novo*. Even accepting without deciding that the *de novo* standard
3 of review applies here, the Court agrees with the Magistrate Judge. The number of
4 defendants and claims that Plaintiff seeks to add would significantly expand the scope
5 of this case. In fact, the proposed amended complaint would double the number of
6 defendants and more than double the number of claims.² Granting leave to amend
7 under these circumstances, particularly in light of the late stage of the litigation at the
8 time Plaintiff filed his motion, would impose undue prejudice on Defendants and
9 unreasonably delay this case. In contrast, denial of Plaintiff's request for leave to amend
10 would not unduly prejudice Plaintiff since he may initiate a separate action to assert new
11 claims against the additional proposed defendants. The Court therefore overrules
12 Plaintiff's objections.

13 **IV. CONCLUSION**

14 For the foregoing reasons, it is ordered that Plaintiff's objection (dkt. no. 63) is
15 overruled. The Court affirms and adopts the Magistrate Judge's rulings (dkt. no. 60).

16 It is further ordered that Plaintiff's motion for an expedited ruling on his objection
17 (dkt. no. 125) is denied as moot.

18 DATED THIS 26th day of June 2015.

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22 MIRANDA M. DU
23 UNITED STATES DISTRICT JUDGE
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28 ²After screening of Plaintiff's 85-page complaint, the Court permitted Plaintiff to
proceed on 4 counts against 20 defendants. (Dkt. no. 9.)